

REMARKS

Claims 1, 2 and 5-8 are pending in the application.

Claims 1, 2 and 5-8 have been rejected.

Claim 1 has been amended, as set forth herein. Support for these amendments may be found in the specification, including paragraphs [0038]-[0042] and Figure 3.

I. **REJECTIONS UNDER 35 U.S.C. § 103**

Claims 1, 6 and 7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohen (US Patent No. 7,299,349) in view of Aitken (US Patent No. 6,947,743) and Kopenen (US Patent Application Publication No. 2004/0235503).

Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohen (US Patent 7,299,349) in view of Aitken (US Patent 6,947,743) and Kopenen (US Patent Application Publication 2004/0235503) and Boyle (US Patent 6,138,158).

Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohen (US Patent 7,299,349) in view of Aitken (US Patent 6,947,743) and Kopenen (US Patent Application Publication 2004/0235503) and Vance (US Patent 7,043,264).

Claim 8 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Cohen (US Patent 7,299,349) in view of Aitken (US Patent 6,947,743) and Kopenen (US Patent Application Publication 2004/0235503) and Boyle (US Patent 6,138,158) and Vance (US Patent 7,043,264).

The rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP §

2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142. In making a rejection, the examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), viz., (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art. In addition to these factual determinations, the examiner must also provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (*In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir 2006) (cited with approval in *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007)).

Independent Claim 1 has been amended, as set forth above.

As stated in Applicants' response to the final Office Action (see page 8, the third paragraph of the response to the final Office Action), Koponen explicitly discloses (see page 4, lines 4-9 of paragraph [0038] of the Description and Figure 4a) that the SMSC may send an acknowledgement to the SMS-gateway at step 406 and this acknowledgement informs about a successful or unsuccessful

transmission of a message to the SMSC. Koponen also discloses (see page 4, lines 11-20 of paragraph [0038] of the Description and Figure 4a) that another optional acknowledgement is a delivery status sent by the SMSC to the SMS-gateway at step 410. From this delivery status message, the service provider knows whether the receiving mobile station received the message. This optional delivery status sent from the mobile station via the SMSC to the SMS-gateway is needed to inform whether the mobile station received a message successfully. Koponen does not appear to explicitly describe that only a single acknowledgement message is transmitted from the SMSC to the service provider, as Koponen states that from the delivery status, the service provider “knows whether the mobile terminal received the message”. It is unclear, and appears possible, that the reference to “the message” refers to each SMS message within a group of SMS messages; and therefore, Koponen would appear to deliver multiple status messages or send multiple acknowledgements from the SMSC to the gateway, not a single acknowledgement message.

In addition, as can be seen from Figure 3 and paragraph [0038] of the Description of Koponen that the optional delivery status is received by the SMSC from the mobile station, while in Applicant’s amended independent Claim 1, the Acknowledgement Message or the Submission Failure Message is prepared by the SMSC in response to receiving a submission of the Push message from the PPG.

Accordingly, Koponen does not appear to disclose or teach the technical features recited in Claim 1 that “if all the short messages of the group obtained by segmenting are sent to the mobile station successfully in a predetermined time, the Short Message Service Center (SMSC) returns only a single Acknowledgement Message, which is prepared by the SMSC in response to receiving a submission of the Push message from the PPG, to the PPG to inform the PPG that the Push message has been sent to the mobile station successfully” and “if any one of the short messages of the group obtained by segmenting is sent unsuccessfully in a predetermined time, the Short Message Service Center returns only a single Submission Failure Message, which is prepared by the SMSC in response to receiving the submission of the Push message from the PPG, to the PPG to inform the PPG that the Push message has not been sent to the mobile station successfully.”

Therefore, there is no motivation for those skilled in the art to modify Cohen and Aitken with Koponen to include a method involving the above distinguishing technical features. As stated in previous responses, the above distinguishing technical features are also not disclosed or taught in Boyle and Vance. None of the cited reference documents disclose, teach or suggest, either alone or in combination, the above distinguishing technical features recited in independent Claim 1.

Accordingly, the Applicant respectfully requests withdrawal of the § 103 rejection of Claims 1, 2 and 5-8.

II. CONCLUSION

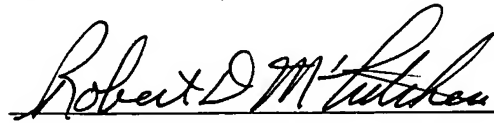
As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@munckcarter.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,
MUNCK CARTER, LLP

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Robert D. McCutcheon
Registration No. 38,717

P.O. Drawer 800889
Dallas, Texas 75380
(972) 628-3632 (direct dial)
(972) 628-3600 (main number)
(972) 628-3616 (fax)
E-mail: *rmccutcheon@munckcarter.com*